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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/532,231

Filing Date: January 18, 2006

Appellant(s): OTT, REINHOLD

Ott
For Appellant

EXAMINER'S ANSWER

Real party

This is in response to the appeal brief filed 7/1/09 appealing from the Office action mailed 10/17/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed is only directed towards two groups of claims: 1, 7-18, 20, 22, 25-26 (rejected under 102; Leyden) and 24, 27-28 (rejected under 103; Leyden in view of Jagger). Appellant did not present arguments directed toward the other groups of claims. The rejection for the other claims stands.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Leyden	5565848
Hadfield	6268795
Zimmermann	6436527
Hamlin	5964353
Jagger	5433391

(9) Grounds of Rejection

Claims 1-28 are rejected. The rejected claims without arguments from appellant will be treated as in agreement with the rejection. All claims will be treated as standing or falling together.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 7-18, 20, 22, 25-26 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Leyden (5565848).

As to claim(s) 1, Leyden discloses:

Retaining component for securing an item from theft, the retaining component comprising:
a first retaining area for fastening the retaining component to a fastening component;
and at least one second retaining area in for fastening the retaining component to the item, the second retaining area being designed to be more easily deformable than the first retaining area (fig. 3, 6, 12; [2, 40-51]; [3, 34-39]),

wherein the retaining component is attachable to the item using a double-sided adhesive tape and includes an elastically deformable material, the double-sided adhesive tape being ductile ([3, 33-39]; [5, 12-18]).

As to claim(s) 7, Leyden discloses:

the first retaining area and the second retaining area include the same material (fig. 3, 6, 12; [7, 31-48]).

As to claim(s) 8, Leyden discloses:

the first retaining area and the second retaining area are an integral part of the retaining component (fig. 3, 6; 12; [2, 40-51]; [3, 34-39])).

As to claim(s) 9, Leyden discloses:

the material thickness of the second retaining area is less than the material thickness of the first retaining area (fig. 3, 6; 12; [7, 31-48]).

As to claim(s) 10, Leyden discloses:

in the second retaining area an adhesive layer is provided for attaching the retaining component to the item([3, 33-39]; [5, 12-18]).

As to claim(s) 11, Leyden discloses:

the attachment of the retaining component to the fastening component is detachable (fig. 3, 12; [6, 8-22]; [7, 9-19]).

As to claim(s) 12, 13, Leyden discloses:

the retaining component comprises sensor elements for monitoring proper fastening of the retaining component to the item ([3, 43] to [4, 14]).

As to claim(s) 13, Leyden discloses:

the sensor elements are designed as electric sensor elements ([3, 43] to [4, 14]).

As to claim(s) 14, 25 Leyden discloses:

electric connecting devices are provided for electrically connecting the sensor elements to an evaluation circuit ([3, 43] to [4, 14]).

As to claim(s) 15, 26, Leyden discloses:

an evaluation circuit is provided in the retaining component ([3, 43] to [4, 14]).

As to claim(s) 16, Leyden discloses:

mechanical connecting devices are provided for connecting the retaining component to the fastening component (fig. 3, 12; [6, 8-22]; [7, 9-19]).

As to claim(s) 17, Leyden discloses:

the connecting devices are designed as wires or cables (fig. 3, 12; [6, 8-22]; [7, 9-19]).

As to claim(s) 18, Leyden discloses:

the connecting devices are integratable in the fastening component (fig. 3, 12; [6, 8-22]; [7, 9-19]).

As to claim(s) 20, Leyden discloses:

a fastening component connected to the retained component (fig. 3) wherein the evaluation circuit is arranged in the fastening component ([3, 43] to [4, 14]).

As to claim(s) 22, Leyden discloses:

Alarm system comprising a retaining component as claimed in claim 1 and a fastening component for fastening the retaining component (fig. 3, 6, 12; [3, 43] to [4, 14]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim(s) 2-3, 5, 23 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Leyden (5565848) in view of Hadfield (6268795).

As to claim(s) 2,

Leyden discloses: The part of the body can be made from a deformable material that can be conformed to an underlying surface on an article to be monitored. The first structure may be an adhesive that acts between the first surface and an underlying surface on an article to be monitored [3, 34-38].

The above art/combination above does not expressly teach an expansion of the double-sided adhesive tape leads to a roughly simultaneously occurring detachment of the same from the retaining component and the item.

Hadfield discloses: when an attempt is made to remove it from the surface, the center section 3 may overcome the adhesive bond and pull away from the surface but the head section 2 will stretch before the adhesive bond is broken. The resulting stretching of the conductive track 5 produces an altered resistive value which is detected by the monitoring circuit. The rate of change of the resistive value, and/or the magnitude of the change would be of a different order compared to resistive changes caused by temperature variations and can thereby be used to trigger an alarm [3, 34-37].

It would have been obvious to one of ordinary skill in the art to modify the above art/combination to teach an expansion of the double-sided adhesive tape leads to a roughly simultaneously occurring detachment of the same from the retaining component and the item, so as to detect tampering with a system by monitoring the properties of a adhesive material connected to the device.

As to claim(s) 3,

Leyden discloses:

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at least one of the expansion and the detachment of the double-sided adhesive tape triggers an alarm ([3, 34-37]; see also claim 22).

As to claim(s) 5, 23,

Hadfield discloses:

the double-sided adhesive tape can be pulled off laterally using a force that is applied on the adhesive tape and that acts upon it roughly in the plane of the adhesive tape [3, 27-37].

3. Claim(s) 4, 6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Leyden (5565848) in view of Zimmerman (6436527).

As to claim(s) 4,

Leyden discloses: The part of the body can be made from a deformable material that can be conformed to an underlying surface on an article to be monitored. The first structure may be an adhesive that acts between the first surface and an underlying surface on an article to be monitored [3, 34-38].

The above art/combination above does not expressly teach the double-sided adhesive tape is equipped with a non-adhesive handling area.

Zimmerman discloses the double-sided adhesive tape is equipped with a non-adhesive handling area [2, 44-46].

It would have been obvious to one of ordinary skill in the art to modify the above art/combination to teach the double-sided adhesive tape is equipped with a non-adhesive handling area, so as to protect the adhesively until desired use.

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As to claim(s) 6,

Leyden discloses: The part of the body can be made from a deformable material that can be conformed to an underlying surface on an article to be monitored. The first structure may be an adhesive that acts between the first surface and an underlying surface on an article to be monitored [3, 34-38].

The above art/combination above does not expressly teach the double-sided adhesive tape involves a product from Tesa company, which is distributed under the term Power Strip.

Zimmerman discloses the double-sided adhesive tape involves a product from Tesa company, which is distributed under the term Power Strip [2, 43-46].

It would have been obvious to one of ordinary skill in the art to modify the above art/combination to teach the double-sided adhesive tape involves a product from Tesa company, which is distributed under the term Power Strip, so as to utilize adhesive material that has a balance between plasticity and elasticity.

4. Claim(s) 19, 21 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Leyden (5565848) in view of Hamlin (5964353).

As to claim(s) 19, 21,

Leyden discloses: a fastening component connected to the retained component (fig. 3).

The above art/combination above does not expressly teach wherein the fastening component includes a winding device for the connecting devices; the electric

connecting devices are contactable via ball contacts in the winding device.

Hamlin discloses a winding device, and ball contacts in the winding device [10, 6 et seq].

It would have been obvious to one of ordinary skill in the art to modify the above art/combination to teach wherein the fastening component includes a winding device for the connecting devices; the electric connecting devices are contactable via ball contacts in the winding device, so as to protect electronic circuitry and save space.

5. Claim(s) 24, 27-28 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Leyden (5565848) in view of Jagger (5433391).

As to claim(s) 24,

Leyden discloses a sensor and electrical circuit [3, 59 et seq].

The above art/combination above does not expressly teach the sensor elements are designed as at least one of capacitive switches, and as optical sensor elements.

Jagger discloses the sensor elements are designed as at least one of capacitive switches and optical sensor elements ([5, 50-62]).

It would have been obvious to one of ordinary skill in the art to modify the above art/combination to teach the sensor elements are designed as at least one of capacitive switches, and as optical sensor elements, so as to utilize alternative or additional sensing means to monitor a system.

As to claim(s) 27, Leyden discloses:

electric connecting devices are provided for electrically connecting the sensor elements

to an evaluation circuit ([3, 43] to [4, 14]).

As to claim(s) 28, Leyden discloses:

an evaluation circuit is provided in the retaining component ([3, 43] to [4, 14]).

(10) Response to Argument

a. Applicant argues starting on page(s) 10, that the prior art does not specifically disclose an “elastically deformable material” “the body will not spring back to its undeformed shape.”

In response, as to “elastically deformable material,” the limitation is met by the prior art, and the broadest reasonable interpretation has been applied to the claims, such as capable for change/expansion/contraction, not rigid or constricted. Limitations from the specification have not been read into the claims.

Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant rely (i.e., “the body will not spring back to its undeformed shape”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Please also see action below.

b. Applicant argues starting on page(s) 13, that the prior art does not specifically disclose “the first retaining area and the second retaining area include the same material.”

In response, the prior discloses “the first retaining area and the second retaining area include the same material” since the first retaining area is the top area of apparatus 60 that is of material 62, and the second retaining area is the bottom area of apparatus 60 that is of material 62, both of which include the same material, 62. Please also see action below.

c. Applicant argues starting on page(s) 14, that there is no motivation to make the combination in the rejection.

In response to applicant's argument that one would not have modified the prior art with Jagger, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Jagger is at least reasonably pertinent to the particular problem with which the applicant was concerned. Specifically, Jagger discloses a conventional use of a capacitive switch and an optical sensor for sensing purposes.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971). The prior art rejection is maintained.

Since the appellant did not specifically provide arguments regarding claims 2-3, 5, 23 (rejected under 35 U.S.C. 103(a) over Leyden (5565848) in view of Hadfield (6268795)); claim(s) 4, 6 (rejected under 35 U.S.C. 103(a) over Leyden (5565848) in view of Zimmerman (6436527)) and Claim(s) 19, 21 (rejected under 35 U.S.C. 103(a) over Leyden (5565848) in view of Hamlin (5964353)), the rejections applied to these claims remain.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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